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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re V.C., a Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO DEPARTMENT OF
HUMAN SERVICES,

Plaintiff and Respondent,

v.

M.C. et al.,

Defendants and Appellants.

A124924

(City & County of San Francisco
Super. Ct. No. JD073074)

M.C. (Father) and C.W. (Mother) appeal an order terminating their parental rights to V.C. entered after a hearing held pursuant to Welfare and Institutions Code¹ section 366.26 (the .26 hearing). We affirm.

I. BACKGROUND

This case was previously before us when we denied on the merits Father's petition for extraordinary review of the order setting the .26 hearing. (*M.C. v. Superior Court* (Jan. 15, 2009, A123073) [nonpub. opn.] (*M.C. I.*)) As we noted there, "[t]he San Francisco Department of Human Services (the department) filed a petition pursuant to section 300 on February 22, 2007, on behalf of V.C., who was then 12 months old. According to the petition, [Mother] had chronic mental health problems, and had been

¹ All statutory references are to the Welfare and Institutions Code.

put on a psychiatric hold on or about February 20, 2007, leaving the child without supervision. The petition also alleged that Mother had failed to protect and supervise V.C., that she had a substance abuse problem for which she was taking methadone, that Mother's rights to another child had been terminated, and that Father also had a substance abuse problem for which he participated in a methadone maintenance program. . . .

[¶] The detention report indicated that Mother had been found walking on Haight Street, appearing incoherent, bumping into pedestrians, and stumbling around with V.C. in her arms. Mother had previously been evicted from transitional housing because of multiple violations of house rules and neglect of V.C. Father was in a methadone maintenance program and was not employed. Mother reported that Father had problems with alcohol and was not an appropriate caregiver. V.C. was placed in foster care.” (*M.C. I, supra*, at pp. 1-2.) On April 13, 2007, the juvenile court found it had jurisdiction over V.C. and ordered reunification services for Father and Mother.

On October 20, 2008, the juvenile court found that Mother and Father had made minimal progress toward alleviating the problems that had led to the placement, terminated reunification services, and scheduled a .26 hearing for February 25, 2009, with a permanent plan of adoption.² The parents were allowed visits with V.C., and were required to be alert, clean, and sober at the visits. Father filed a writ petition with this court pursuant to California Rules of Court, rule 8.452, and we denied the petition on the merits. (*M.C. I, supra*, at p. 7.)

A report prepared for the .26 hearing, filed in January 2009, indicated that V.C. had been living with a prospective adoptive parent in October 2008, that she was doing well, and that the prospective adoptive parent wanted to adopt her. He was meeting V.C.'s medical, physical, and developmental needs, and she appeared comfortable and bonded with him. Mother had not visited with V.C. since October 28, 2008, and Father had supervised visits for two hours a week.

² The events that occurred between V.C.'s detention and the time the juvenile court set the .26 hearing are discussed in our opinion in *M.C. I, supra*, at pages 2-5.

The .26 hearing took place on May 5, 2009. Before the hearing began, Mother and her counsel told the court Mother wanted a continuance to allow her to obtain the presence of her therapist, Lisa Roberts, and another witness, Lisa Torres. Mother also told the court she wished to testify but was “not in the right state of mind,” that she was “very suicidal,” that she was “not doing very well,” and that her therapist thought it best that she go into the hospital for a couple of weeks and change her medications. Mother’s counsel tried unsuccessfully to contact the therapist. After eliciting from Mother that she did not feel she would hurt herself or anyone else, the court denied the continuance. After uttering profanities, Mother left the courtroom, and Father also left, telling his counsel he did not want her to speak for him. Father returned briefly to the courtroom and interrupted the proceedings, apparently twice.³ Mother and Father later returned to the courtroom and participated in the hearing.

Rosa Hernandez, the supervisor of the social worker who had prepared the report for the .26 hearing, testified that V.C. was still living with the prospective adoptive parent, who was committed to adopting her. She called the prospective adoptive parent “Daddy.” Father had been having two-hour supervised visits with V.C. Hernandez believed it would be detrimental for V.C. to continue visiting with Father, because of his “aggressiveness, his erratic way of conducting himself.” Mother had not been visiting with V.C., and Hernandez believed that further visits after adoption would be detrimental because of Mother’s “erratic behavior, mental health status, and aggressiveness.” Hernandez had not supervised or observed Father with V.C., and had not seen his interactions with her. She was aware that at the end of visits with Mother, V.C. used to cry. During those visits, Mother would bring food for V.C. and play with her, but Mother used to fall asleep during visits. She was also aware that V.C. had lived with Mother for her first year of life.

³ The juvenile court called a brief recess to allow Father’s counsel to speak with him, but counsel reported after the break that Father had refused to speak with her. The court refused her request to be relieved as Father’s counsel.

Mother testified that V.C. knew her as “Mommy,” and that V.C. cried for her whenever she left. V.C. had lived with her during her first year of life, and they had a “wonderful” bond. Mother had visited V.C. more than 50 times during the dependency, and acknowledged that during the early visits, she could not stay awake because of her medications. However, the visits were “fun.” She had missed some visits when she was in the hospital. Mother stated that she had been diagnosed with multiple personality disorder and that she took medications and went to daily therapy. When asked what benefit V.C. would receive from their relationship if she were not adopted, Mother replied, “It wouldn’t benefit her because I’m not stable.” Her attorney asked her a similar question later in the examination, and Mother replied, “The benefit of knowing that I’m her mother and that I’m there for her and that I can take care of her. But like I said and like you’ve said, she needs an even keel. She doesn’t need this,” apparently making an up-and-down hand motion.

Father testified that he had been visiting V.C. regularly. When he arrived, V.C. would smile and run and call him “Daddy,” and jump on him. He would feed her and play with her. She would be reluctant to end the visit, clinging to him and crying. He believed it would be beneficial to V.C. to continue their relationship.

The juvenile court found by clear and convincing evidence that V.C. would be adopted, and terminated the parental rights of both Mother and Father. The court found that visitation with the parents would be detrimental, and terminated visitation.

II. DISCUSSION

A. Benefit to Continuing Parental Relationship

Mother and Father contend the juvenile court should have applied the beneficial relationship exception to termination of their parental rights.⁴

⁴ Mother’s contentions on appeal concern matters that occurred *after* the .26 hearing was set, and are cognizable on appeal despite her failure to seek writ review of the order setting the .26 hearing. (*Sue E. v. Superior Court* (1997) 54 Cal.App.4th 399, 404-405; see § 366.26, subd. (1)(2).)

Section 366.26 provides that if the court finds at the .26 hearing by clear and convincing evidence that it is likely the child will be adopted, the court “shall terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1).) A finding that the court has continued to remove the child from the custody of the parent and has terminated reunification services—as occurred here—constitutes a sufficient basis for termination of parental rights. (*Ibid.*) “Under these circumstances, the court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Ibid.*)

The parent bears the burden of producing evidence sufficient to persuade the court that the child would benefit from continuing the relationship. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.) To meet this burden, “the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.] The parent must demonstrate more than incidental benefit to the child. In order to overcome the statutory preference for adoption, the parent must prove he or she occupies a parental role in the child’s life, resulting in a significant, positive emotional attachment of the child to the parent. [Citations.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229 (*Dakota H.*)). This showing is difficult to make where the parents have not advanced beyond supervised visitation. (*In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523 (*Jeremy S.*), overruled on another point in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

In making its determination, the court “balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child. However, if severing the existing parental relationship would deprive the child of ‘a substantial, positive emotional attachment *such that the child would be greatly harmed*, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ [Citation.] In other words,

if an adoptable child will not suffer *great detriment* by terminating parental rights, the court must select adoption as the permanency plan.” (*Dakota H.*, *supra*, 132 Cal.App.4th at p. 229, italics added.) It is not sufficient to show that a child would derive *some* benefit from continuing a relationship maintained through visitation. Thus, “[a] child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)⁵

The juvenile court here could reasonably find that the parents had not met their burden to show that the beneficial relationship exception applied. We acknowledge the evidence that Father had visited V.C. regularly, that Mother had also visited with her many times, and that V.C. appeared to enjoy her visits with both Mother and Father. However, as noted in *Jeremy S.*, *supra*, 89 Cal.App.4th at page 523, “[o]ne can know a child’s interests, enjoy playtime together, and be a loved relative, but not occupy a parental role in the child’s life.” V.C. had lived in foster care for more than two-thirds of her life, since she was removed from Mother’s care at 12 months old. The record does not indicate that Father had ever cared for her on a day-to-day basis. The parents’ visits with V.C. were supervised. They had a history of erratic behavior, which was manifested at the .26 hearing. Indeed, Mother acknowledged at the hearing that because of her mental health problems, she was not stable, and that V.C. needed “an even keel” in her life. On this record, the juvenile court could reasonably conclude that V.C. would not suffer great harm from severing parental ties, and that the security and stability of an adoptive home would outweigh any detriment. (See *Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.)

⁵ The courts are divided on whether we review a trial court’s determination under section 366.26, subdivision (c)(1) for substantial evidence (see, e.g., *In re S.B.* (2008) 164 Cal.App.4th 289, 297-298) or for abuse of discretion (see, e.g., *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351). The practical differences between the two standards are not significant (*ibid.*), and under either standard, our conclusion would be the same.

B. Denial of Continuance of .26 hearing

Mother and Father contend the juvenile court abused its discretion in denying Mother's request for a continuance of the .26 hearing to allow her to obtain the testimony of additional witnesses. They argue that in denying the continuance, the juvenile court failed to consider all relevant evidence affecting V.C.'s interests. (See *Guadalupe A. v. Superior Court* (1991) 234 Cal.App.3d 100, 106-107 [trial court should not restrict testimony on formalistic grounds, but should avail itself of all evidence bearing on child's best interest].) We review the juvenile court's decision for abuse of discretion. (See *In re John M.* (2006) 141 Cal.App.4th 1564, 1571-1572.)

There was no abuse of discretion here. Mother indicated she wished to call two witnesses who were unavailable on the date of the hearing, her therapist, Lisa Roberts, and another witness, Lisa Torres.⁶ According to Mother, her therapists had said she should have her medications adjusted and needed to be hospitalized for a couple of weeks. Her counsel told the court that as a matter of legal strategy, she had not intended to call them. Nothing in the record indicates the witnesses would have aided the juvenile court in deciding the issues before it, particularly whether V.C. was adoptable and whether the detriment from severing Mother and Father's relationship with her outweighed the security and stability of an adoptive family.

⁶ Although the matter is not entirely clear, it appears from the colloquy that Torres was also Mother's therapist.

III. DISPOSITION

The order appealed from is affirmed.

RIVERA, J.

We concur:

RUVOLO, P.J.

REARDON, J.